

REPORT
on the Free Movement of Workers
in Greece in 2002-2003

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General Remarks

From a migration law point of view the years 2002 and 2003 were not dominated by the major changes of the Greek Law on the status of aliens (Law 2910/2001, Official Journal of the Hellenic Republic A, 91/02.05.2001).

With regard to EU citizens, there were no important legislative changes during the years 2002 and 2003. The number of court cases based on EU law on the free movement of workers is small compared to the total number of cases relating to third country migrants. This is probably due to the fact that a relatively small number of EU citizens are employed in Greece, and that most of the legal issues have been resolved in the past.

Most significant changes concern the employment in the public sector. An important number of presidential decrees concerning the above sector were entered in force specifying the posts which can be occupied only by persons of Greek nationality.

Concerning the free movement of persons mainly was discussed the item of the recognition of professional qualifications awarded by another Member State. This item is important due to the fact that an important number of young Greek are students of privates “colleges” cooperating with some foreign universities and offering such studies on a commercial basis. On the other hand, art. 16 of the Greek Constitution provides that “education at university level shall be provided exclusively by institutions which are fully self-governed public law legal persons. PD 69/2003 implements Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications and supplementing the general systems for the recognition of qualifications

The items concerning the free movement of workers following the enlargement of the European Union were not broadly discussed. This is due perhaps to the fact that the frontier countries of Greece are not concerned by this enlargement. Nevertheless the government decided in 2004 to proceed to a transitional arrangement for the access to the country of workers, who are nationals of the new EU member states.

Chapter I

Entry, Residence, Departure

A. Entry

a) Text in force

The rules on free movement of workers have been implemented into Greek law by the P.D. 499/31.12.1987.

Art. 2 (1) of the above Decree contains the basic rule on the right to enter and reside for a certain period, which applies to Union citizens and, cf. art. 2 (3), members of their family.

According to art. 3 (1) of the above Decree, an EU citizen is allowed to enter simply on production of a valid passport or a national identity card.

The abovementioned rules have remained unchanged throughout 2002 and 2003.

b) Draft legislation

c) Judicial practice

A Greek football club had in 1996 received from another club a transfer compensation fee on the expiry of the contract of a professional footballer in order for him to be employed by a club of another Member State by application of the rules in force at that time. This payment is unlawful and in contravention of the article 48 of the Treaty which precludes the application of national rules laid down by the national sporting associations. Therefore the former club must reimburse this compensation to the new club (Court of Appeal of Athens 3050/2002, ELDik 2002, p. 1067).

d) Miscellaneous

e) Recent legal literature

D. Papayiannis, From the free movement of workers to the free movement and residence of citizens (in Greek), *Review of European Law* 2002, p. 227-272. The author examines the evolution of the right of free movement and residence from the first steps of the E.E.C. up to today. He asserts that this right should be actually exercised without any conditions.

S. Vrellis, *Law of Aliens* (in Greek), Athens, 2003, ed. Nomiki bibliothiki. The author analyses the Greek migration law currently in force.

H. Tagaras, *The free movement of merchandises, persons, services and capitals in European Union* (in Greek), Athens 2002 (2e ed.), ed. Sakkoulas.

B. Residence

a) Text in force

Art. 2 (1) of the P.D. 499/31.12.1987 contains the basic rule on the right of E.U. citizens to enter and reside for up to 3 months.

Art. 4 of the above Decree provides that the residence permit is valid throughout the territory and for at least five years from the date of issue.

Art. 7 of the above Decree provides that a worker pursuing an activity as an employed person where the activity is not expected to last for more than three months, has the right of residence without having a residence permit, issued to him.

The abovementioned rules have remained unchanged throughout 2002 and 2003.

b) Draft legislation

c) Judicial practice

d) Miscellaneous

e) Recent legal literature

C. Departure

a) Text in force

The rules on expulsion in Article 74 of the Greek Penal Code, Decree 4429/1964 also apply to EU citizens. Art. 11 and 12 of the P.D. 499/31.12.1987 contain the rules concerning expulsion from Greek territory on grounds of public policy, public security or public health. Art. 11 (1) of the P.D. 499/31.12.1987 provides that measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned and art. 11 (2) that previous criminal convictions shall not in themselves constitute grounds for the taking of such measures.

A decision on expulsion is usually made by a court of law, but in some cases it can also be decided administratively. Appeals against administrative decisions on expulsion have suspensive effect.

Law 3189/21.10.2003 modified as a result of the Calfa judgment, art. 17 law 1729/1987 and provides that the enforcement of expulsion orders in case of offences under the law on drugs are governed by Article 74 of the Greek Penal Code "...under reserve of the provisions of the international conventions ratified by Greece" (see below Chapter V).

b) Draft legislation

c) Judicial practice

There are no court cases on detention or deportation of EU citizens.

d) Miscellaneous

e) Recent legal literature

Chapter II

Equality of Treatment

a) Text in force

Art 2 (3) of Law 2431/1996 provides that the knowledge of the Greek language is necessary for employment in the public sector. The degree of knowledge of the language is defined each time taking in account the requirements of the post of employment.

The abovementioned rule has remained unchanged throughout 2002 and 2003.

b) Draft legislation

Draft legislation was presented at the end of 2003 in order to implement the EC Directives 2000/43 and 2000/78 concerning the equal treatment between persons irrespective of racial or ethnic origin and the establishment of a general framework for equal treatment in employment and occupation. This draft is still pending because of the change of government and of the parliamentary majority succeeding the elections in March 2004.

c) Judicial practice

d) Miscellaneous

e) Recent legal literature

P. Mavridis, The social protection of seamen according to European Law (in Greek), *Review of Social Security Law* 2003, p. 1-25. The author states that seamen enjoy the equality of treatment when they perform their work on the ship of the flag of a community state. The ship is regarded as a territory of the state.

Chapter III

Employment in the Public Sector

a) Text in force

A number of presidential decrees (PD) were entered into force concerning employment in the public sector. These decrees specify the posts which involve “direct or indirect participation in the exercise of powers conferred by public law and in the discharge of functions whose purpose is to safeguard the general interests of the state or of other public authorities and which therefore require a special relationship of allegiance to the state on the part of persons occupying them and reciprocity of rights and duties which form the foundation of the bond of nationality”. In total about 35 PD are issued concerning employment in the public sector.

PD 8/2002 provides that only persons of Greek nationality can be promoted as General Directors, Directors and Seniors of Sections of the Ministry of Finance.

The same PD provides that only persons of Greek nationality can be appointed to the Ministry of Finance as tax collectors, fiscal officers, customs officers, financial inspectors, data base-network-software-hardware specialists and security employees carrying arms.

PD 74/2002 provides that only persons of Greek nationality can be promoted as General Directors, Directors and Seniors of Sections of the Ministry of Transports and Communications. The same PD provides that only persons of Greek nationality can be appointed to the Ministry of Transports and Communications as counselors of the Minister, special collaborators and journalists under a private law contract.

PD 75/2002 provides that only persons of Greek nationality can be promoted as General Directors, Directors and Seniors of Sections of the Post Office Bank. The same PD provides that only persons of Greek nationality can be appointed to the Post Office Bank as security guards.

PD 88/2002 provides that only persons of Greek nationality can be appointed as policemen, firemen, frontier guards, special guards, rural policemen, civil servants of the Police and civil servants of the Fire Brigade.

PD 7/2003 provides that only persons of Greek nationality can be promoted as General Directors, Directors and Seniors of Sections of the Ministry of Culture.

PD 21/2003 provides that only persons of Greek nationality can be promoted as General Directors, Directors and Seniors of Sections of the General Secretariat of Social Security.

b) Draft legislation

c) Judicial practice

d) Miscellaneous

e) Recent legal literature

Chapter IV

Family Members

a) Text in force

Article 19 of Law 3013/2002 modified article 33 par. 1 of Law 2910/2001. Third country nationals, spouses of Greeks or other EU citizens, are granted a residence permit, not for a time period shorter than 5 years as in the past, but for a time period of at least five years. This permit also constitutes a work permit. This permit is renewed ipso facto for a time period of at least five years. The above article provides for the first time that the same permit is also valid and covers the residence of the non-married descendants who are under the age of 18 years. The above article finally provides that the residence permit under the same conditions is also granted to the widows and to the minor descendants of a deceased Greek or other EU citizen.

Article 11 of Law 3074 /2002 specifies that as members of the family of a Greek or other EU citizen are included his/her spouse, their descendants under the age of 21 years and the dependent parents of his/her spouse. These persons can acquire an independent right of residence in the country in the cases enumerated by the law, i.e. when they attain the age of 21 years, when a Greek or other EU citizen is violent towards these persons, or in case of divorce.

b) Draft legislation

c) Judicial practice

d) Miscellaneous

The Greek Ombudsman proposed in 2003 to the Greek Government to modify article 33 par. 1 of Law 2910/2001 in order to consider as members of the family of a Greek or another EU citizen, not only their descendants under the age of 21 years, but also their dependent descendants having reached the age of 21 years (the reports of Greek Ombudsman are available only in Greek).

e) Recent legal literature

Chapter V

Influence of Recent Judgments of the Court of Justice

By its judgment of 27 September 1996 (1067/1996) the Arios Pagos (Supreme Court of Cassation) referred to the European Court of Justice for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Articles 7, 8(1) and (2), 8a(1), 48, 52 and 59 of the EC Treaty and relevant Community directives relating to freedom of movement for persons and freedom to provide services in order to assess the compatibility with those provisions of the national law (art. 17 law 1729/1987) providing for the expulsion for life from the national territory of nationals from other Member States found guilty on that territory for offences under the law on drugs. The European Court of Justice (*Calfa* C-348/1996) in answer to these questions, ruled that articles 48, 52 and 59 of the EC Treaty and Article 3 of Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health preclude legislation which, with certain exceptions, in particular where there are family reasons, requires a Member State's courts to order expulsion for life from its territory of nationals of other Member States found guilty on that territory of the offences of obtaining and being in possession of drugs for their own personal use. Consecutively by judgment (1243/2000) the Arios Pagos decided that Greek legislation should be interpreted in accordance with the European legislation and invalidated the order of expulsion for life from Greek territory of Mrs Calfa. Law 3189/21.10. 2003 modified conclusively art. 17 law 1729/1987 and provides that the enforcement of expulsion orders in case of offences under the law on drugs are governed by Article 74 of the Greek Penal Code “under reserve of the provisions of the international conventions ratified by Greece”

By judgment 844/2003 the State Audit Council (Elegktiko Synedrio) referred to the European Court of Justice decision of 22 November 1995 (*Vougioukas*). Articles 48 and 51 of the EC Treaty must be interpreted as precluding refusal to take into account, for the acquisition of the right to a pension, periods of employment completed by a person subject to a special scheme for civil servants in another Member State, where the relevant national legislation allows such periods to be taken into account if they have been completed in comparable establishments within that State. But, according to the Council, this case law was not to be understood as imposing upon the competent institution of the Member State where the pension is demanded, to pay the amount which corresponds to the total of the periods of employment in every E.U Member State. Only the competent institution of the Member State of employment is competent for the administration of the old-age pension concerning the periods of employment in his territory according his own pension provisions.

The case law of the Court of Justice states that the Treaty rules governing freedom of movement for workers and regulations adopted to implement them cannot be applied to cases which have no factor linking them with any of the situations governed by Community law and all elements of which are purely internal to a single Member State (C-36/82, C-27/88, C-64/96, C-65/96) has been cited by the judges of the Council of

State decision 224/2002, "*To Syntagma*", 2002, 765. This case law is cited in order to arrive at the conclusion that art. 3 of the Regulation 1251/70 should not be applied to the case of the widow of a Greek citizen, national of a third country. The rules concerning the right of residence in Greece after the death of the husband are only applied to EU citizens.

Chapter VI

Policies of a General Nature with Possible Repercussions on the Free Movement of Union Citizens

a) Text in force

The Bill on the ratification of the 1999 Agreement between the EC and Switzerland on the free movement of persons was approved in 2001 (Law 2903/2001) and entered into force in June 2002. The Ministry of Foreign Affairs officially announced this entry into force by the Announcement of 20/22.1.2003.

b) Draft legislation

c) Judicial practice

d) Miscellaneous

e) Recent legal literature

P. Petroglou, The right of immigrants to the respect of their family life (in Greek), *Review of Social Security Law* 2003, p. 561-570. The author states that the respect of the fundamental rights of the immigrants is absolutely necessary. The jurisprudence of the European Court of Human Rights is of an extreme importance regarding the vulnerable situation of the immigrant.

Chapter VII
EU Enlargement

Nothing to report.

Chapter VIII Statistics

Foreign Workers

Total	391,764
Community workers	15,819
Third country workers	375,945

Source: Census of 18 March 2001

Repartition of community workers by nationality

Austria	471
Belgium	464
Danemark	262
Finland	37
France	1,772
Germany	3,746
Holland	857
Ireland ¹	83
Italy	2,269
Luxembourg	15
Portugal	104
Spain	358
Sweden	640
United Kingdom	4,641
Total	15,819

Repartition of community workers family members by nationality

Austria	179
Belgium	192
Danemark	140
Finland	94
France	732
Germany	1,618
Holland	254
Ireland	81
Italy ⁹	26
Luxembourg	2
Portugal	32
Spain	125
Sweden	260
United Kingdom	1,541

Repartition of community workers by sex

Total	15,819
Men	7,822
Women	7,997

Repartition of community workers by branch

Total	15,819
Agriculture, animal breeding, hunting and forestry, fishing	781
Mining and quarrying	12
Manufacturing	1,344
Electricity, gas, steam and water supply	36
Construction	627
Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods, hotels and restaurants	3,950
Transport, storage and communication	1,541
Financial intermediation Real estate, renting and business activities	329
Others/unknown activity	7,199

Repartition of community workers by branch

Total	391,764
Agriculture, animal breeding, hunting and forestry, fishing	68,682
Mining and quarrying	648
Manufacturing	48,836
Electricity, gas, steam and water supply	569
Construction	96,003
Wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods, hotels and restaurants	61,947
Transport, storage and communication	10,721
Financial intermediation Real estate, renting and business activities	1,506
Others/unknown activity	103,209

Repartition of all workers by sex

Total	391,764
Men	270,771
Women	120,903

Chapter IX

Social Security

a) Text in force

b) Draft legislation

A draft PD was prepared for the implementation of the Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community

c) Judicial practice

d) Miscellaneous

A circular of the General Secretary of Social Security (1336/30.9.2002) underlines that the complementary social assurance of workers being transferred to another Member State should be continued during this transfer. Every contrary national text is void and non applicable.

A circular of the General Secretary of Social Security (20533/1324/4.9.2003) informs about the entry into force of the Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation No 1408/71 and Regulation No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality. It describes the main provisions of the above Regulation.

e) Recent legal literature

- P. Mavridis, The social protection of seamen according to European Law (in Greek), *Review of Social Security Law* 2003, p. 1-25. The author states that seamen enjoy the equality of treatment when they perform their work on the ship of the flag of a community state. The ship is regarded as a territory of the state.
- N. Milioni, Modern aspects of the right to pension (in Greek), *Review of Social Security Law* 2003, p. 161-175 : The author examines, among other issues, nationality as a condition of the right to pension.
- B. Pashalia, The principle of “lex loci labori” in the European Social Security law (in Greek), *Review of Social Security Law* 2003, p.321-329. The author examines the principle of “lex loci labori” concerning the social security of persons moving within the Community. She states that it is necessary to examine more carefully the applications of this principle taking particularly into account the new (atypical) forms of employment.

Chapter X

Establishment, Provision of Services, Students

a) Text in force

PD 69/2003 implements Directive 1999/42/EC of the European Parliament and of the Council of 7 June 1999 establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications. The PD provides the methods of recognition of formal qualifications awarded by another Member State, of recognition of professional qualifications on the basis of professional experience acquired in another Member State, and of recognition of other professional qualifications obtained in another Member State.

b) Draft legislation

c) Judicial practice

The Technical Chamber of Greece shall enroll on its registers all persons having completed their studies in a Member State University under the condition of recognition of their qualification by the competent organ of the Greek State (Council of State 1330/2003, Nomiko Vima, 2004, 161.

The Ministry of Education shall enroll on its “List of Professors” a professor having completed his studies in a Member State University subject to the condition that his profession is already recognised by the law of a Member State and corresponds to a profession recognized by the Greek Ministry of Education (Administrative Court of Appeal of Athens 972/2002, “Adm. Proc.” 2003, 929.

Chapter XI

Miscellaneous

The Greek Ombudsman organized in June 2003 an international Congress on “The free movement of workers and the coordination of social security systems”. The reports also focused on the role of the ombudsmen to support the freedom of movement of the workers.

The Greek Parliament and the Parliamentary Assembly of the Council of Europe organized in June 2003, in Athens, a Congress on Immigration.